

ORDINANCE NO. 5017

An Ordinance of the City of McMinnville amending the McMinnville Municipal Code, Chapter 5.42, Taxation of Cannabis and Cannabis Products to authorize contracting with a third party to collect taxes.

RECITALS:

On April 26, 2016, the City Council adopted Ordinance 5004 (codified as MMC Ch. 5.42) imposing a three percent tax on the sale of marijuana items by a marijuana retailer and establishing procedures for the collection of such tax, and Resolution 2016-19, submitting the question of whether to impose the three percent tax to the electors to be decided at the November 8, 2016, general election, pursuant to Oregon Revised Statutes (ORS) 475B.345.

On November 8, 2016, the electors of McMinnville approved the referred measure, authorizing the City to impose a three percent tax on the sale of marijuana items by a marijuana retailer.

The State of Oregon, acting by and through its Department of Revenue, is authorized to contract with local jurisdictions for the purpose of collecting local taxes on the sale of marijuana items by marijuana retailers.

An amendment of Ordinance 5004 is necessary to authorize alternative procedures for collecting the tax approved by the electors by allowing the City to contract with the State of Oregon for that purpose.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The McMinnville Municipal Code Chapter 5.42, Taxation of Cannabis and Cannabis Products is amended as outlined in Exhibit 1.
2. This Ordinance will take effect January 1, 2017.
3. The provisions of Ordinance 5004 that are not expressly amended by this Ordinance shall remain in effect.

Passed by the Council this 22nd day of November, 2016, by the following votes:

Ayes: Hill, Jeffries, Menke, Ruden, Yoder

Nays: _____

Approved this 22nd day of November, 2016.



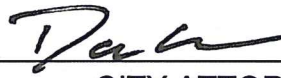
COUNCIL PRESIDENT

Attest:



CITY RECORDER

Approved as to form:



CITY ATTORNEY

EXHIBIT 1

CHAPTER 5.42

TAXATION OF CANNABIS AND CANNABIS PRODUCTS

- 5.42.010 Definitions for Chapter 5.42
- 5.42.020 Imposition of tax on retail sale of marijuana items
- 5.42.025 Procedure for Collection of Tax**
- 5.42.030 Collection of tax
- 5.42.035 Refund; credit
- 5.42.040 Deficiencies; redeterminations
- 5.42.050 Registry
- 5.42.060 Administration
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- 5.42.110 Violations
- 5.42.120 Penalty

TAXATION OF CANNABIS AND CANNABIS PRODUCTS

5.42.010 Definitions.

As used in Chapter 5.42:

A. "Cannabinoid concentrate," "cannabinoid edible," "cannabinoid extract," "cannabinoid product," "consumer," "immature marijuana plant," "marijuana flowers," "marijuana items," "marijuana leaves" and "marijuana retailer" have the meanings given those terms in ORS 475B.015.

B. "Retail sale" and "Retail sales price" have the meanings given those terms in ORS 475B.700.

C. "Finance Department" means the Finance Department of the City of McMinnville.

D. "Finance Director" means the Finance Director of the City of McMinnville.

E. "City" means the City of McMinnville, Oregon.

5.42.020 Imposition of tax on retail sale of marijuana items.

A. A tax is hereby imposed upon the retail sale of marijuana items in the City. The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs.

B. The tax imposed under this section shall be imposed at the rate of:

1. 3 percent of the retail sales price of marijuana leaves;
2. 3 percent of the retail sales price of marijuana flowers;
3. 3 percent of the retail sales price of immature marijuana plants;

4. 3 percent of the retail sales price of a cannabinoid edible;
5. 3 percent of the retail sales price of a cannabinoid concentrate;
6. 3 percent of the retail sales price of a cannabinoid extract;
7. 3 percent of the retail sales price of a cannabinoid product that is intended to be used by applying the cannabinoid product to the skin or hair; and
8. 3 percent of the retail sales price of cannabinoid products other than those described in subsection (B)(7) of this section.

C. If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.

D. The amount of the tax shall be separately stated on an invoice, receipt or other similar document that the marijuana retailer provides to the consumer, or shall be otherwise disclosed to the consumer.

E. A person may not knowingly sell, purchase, install, transfer or possess software programs or other electronic devices intended to hide or to remove records of retail sales of marijuana items or to falsify records of retail sales of marijuana items.

5.42.025 Procedure for Collection Tax.

A. Except as provided in subsection B of this section, the provisions of Sections 5.42.030 through 5.42.120, shall be used by the City for the purpose of collecting the tax imposed by Section 5.42.020.

B. Notwithstanding the provisions set forth in subsection A of this section, the City may contract with the State of Oregon for the purpose of collecting the tax imposed by Section 5.42.020, and the provisions of any such contract shall be used for the purpose of imposing such tax.

5.42.030 Collection of tax.

A. Except as otherwise provided in this Chapter, the tax imposed upon the consumer under 5.42.020 shall be collected at the point of sale and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax is considered a tax upon the marijuana retailer that is required to collect the tax, and the marijuana retailer is considered a taxpayer.

B. The marijuana retailer shall submit a return to the Finance Department on or before the last day of January, April, July and October of each year for the previous calendar quarter, or if the last day is not a business day, the next business day thereafter.

C. The marijuana retailer shall pay the tax to the Finance Department in the form and manner prescribed by the Finance Department, but not later than with each quarterly return, without regard to extensions under subsection (E) of this section.

D. Marijuana retailers shall file the returns required under this section regardless of whether any tax is owed.

E. The Finance Director for good cause may extend the date for making any return under this section. The extension may be granted at any time if a written request is filed with the Finance Department during or prior to the period for which the extension may be granted. The Finance Department may not grant an extension of more than 30 days.

5.42.035 Refund; credit.

A. Whenever the amount of any Tax imposed under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the Finance Department, it may be refunded, provided a verified claim in writing, stating the specific reason upon which the claim is refunded, is filed with the Finance Director within three (3) years from the date of payment. The claim shall be made on forms provided by the Finance Department.

B. The Finance Director shall have thirty (30) days from the date of the receipt of a claim to make a written determination as to its validity.

C. If the claim is approved then, at the discretion of the Finance Director, either:

1) The excess amount collected or paid may be refunded to the marijuana retailer from whom it was collected or by whom it was paid, or the marijuana retailer's administrators, executors or assignees; or,

2) The refund may be credited toward any amounts then due and payable from the marijuana retailer from whom it was collected or by whom it was paid, and the balance, if any, may be refunded to the marijuana retailer or the marijuana retailer's administrators, executors, or assignees.

5.42.040 Deficiencies; redeterminations.

A. Every person who collects any amount under 5.42.030 shall hold the same in trust for the City of McMinnville and for the payment thereof to the Finance Department in the manner and at the time provided in 5.42.030.

B. If the Finance Director determines that a return is incorrect, the Finance Director may compute and determine or estimate the amount required to be paid based on the facts contained in the return or returns or any other information within the Finance Director's possession. One or more deficiency determinations may be made on the amounts due for one or more periods.

1. In making a deficiency determination, the Finance Director may offset overpayments, if any, which may have been previously made for a period or periods against any deficiency for a subsequent period or periods, or against penalties, and interest on the deficiency.

2. Once a deficiency determination is made, the Finance Director shall serve a written deficiency notice on the marijuana retailer. The notice may be given personally or sent by United States mail. If sent by mail, the notice shall be addressed to the marijuana retailer at his/her address as it appears on the records of the City or as the City can best determine.

3. Any deficiency is due and payable ten (10) days after the Finance Director serves the written deficiency notice. If not paid by the tenth day after service of a deficiency notice, the amount shall be delinquent and penalties and interest shall be applied as established in this Chapter.

4. The marijuana retailer may petition for a redetermination provided that the petition is filed within ten (10) days of service of the deficiency notice. Nothing prohibits the Finance Director from extending the time for petition beyond ten (10) days at his/her discretion.

5. Except as provided in this Chapter, every deficiency determination shall be made and notice mailed within three (3) years after a return was originally filed or subsequently amended, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this Chapter, a failure to file a required return, or a willful refusal to collect and remit the Tax, a deficiency determination may be made, or a proceeding for the collection of the deficiency may be commenced at any time.

6. If the Finance Director believes that the collection of any Tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, the Finance Director may make a determination of the Tax or amount of Tax required to be collected. The Finance Director will serve a written deficiency notice and demand for immediate payment on the marijuana retailer. The amount shall be immediately due and payable, and the marijuana retailer shall immediately pay such determination to the City after service of the notice, provided, however, the marijuana retailer may petition, after payment has been made, for a redetermination of the Finance Director's assessment, provided that the petition is filed within ten (10) days of service of the deficiency notice.

C. If a petition for redetermination, and refund is filed within the requisite time period, the Finance Director shall reconsider the determination, and, if the person has so requested in his/her petition shall grant the person an oral hearing and shall give him/her ten (10) days' notice of the time and place of the hearing. The Finance Director may continue the hearing from time to time as necessary.

5.42.050 Registry

A. Every person engaging or about to engage in business involving the retail sale of marijuana items in this City shall register with the City on a form provided by the Finance Department. Marijuana retailers starting business or engaging in collection of the Tax described in Section 5.42.020 must register within 15 calendar days after commencing business or engaging in collection of the Tax. The privilege of registration after the date of imposition of the Tax shall not relieve any person from the obligation of payment or collection of Tax regardless of registration. Registration forms shall require the name under which a marijuana retailer transacts or intends to transact business, the location of the place of business, and other similar additional information required by the Finance Department to facilitate the collection of the Tax. The registration shall be signed by the marijuana retailer.

B. The Finance Department shall, within ten business days after registration, issue without charge a certificate of authority to each marijuana retailer to collect the Tax, together with a certificate for each additional place of business of each Marijuana Retailer. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Finance Department upon the cessation of business at the location named, or upon the business sale or transfer. Each certificate shall state the place of business to which it is applicable and shall be prominently displayed.

C. The certificate shall state, at minimum, the following:

1. The name of the Marijuana Retailer,

2. The address of the premises,
3. The date upon which the certificate was issued, and
4. This statement: "This Marijuana Retailer Registration Certificate

signifies that the person named has fulfilled the requirements of McMinnville Municipal Code Chapter 5.42 for the purpose of collecting and remitting the Marijuana Items Tax. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a Licensed Premises without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City. This certificate does not constitute a permit."

D. A Marijuana Retailer that has not registered with the Finance Department will not be issued a Marijuana Retailer Registration Certificate.

5.42.060 Administration.

A. Every marijuana retailer shall keep accounting books, invoices, accounts, and other records. These records shall be retained for three (3) years and six (6) months after they come into being.

B. The Finance Director may examine, during normal business hours, the books, papers and accounting records relating the marijuana retailer's liable for the Tax, after notification to the marijuana retailer, and may investigate the business of the marijuana retailer in order to verify the accuracy of any return made, or if no return is made by the marijuana retailer, to ascertain and determine the amount required to be paid.

C. A formal audit of all the marijuana retailer's records shall be performed at the discretion of the Finance Director

D. Except as otherwise required by law, it shall be unlawful for any officer, employee, or agent of the City to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of the Chapter. Nothing in this Section shall be construed to prohibit:

1. The disclosure to, or the examination of, financial records by City officers, employees, or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting Taxes imposed under the terms of the Chapter;

2. The disclosure to the marijuana retailer or his/her authorized representative of financial information, including amounts of Marijuana Tax, penalties, or interest, after filing of a written request by the marijuana retailer or his/her authorized representative and approval of the request by the Finance Director;

3. The disclosure of the names and addresses of any person to who this Chapter applies;

4. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular marijuana retailer's return or application; or

5. The disclosure of financial information to the City Attorney or other legal representative of the City to the extent the Finance Director deems disclosure or access necessary for the performance of the duties of advising or representing the Finance Director, the Finance Department, or the City.

5.42.070 Appeals

Any person aggrieved by any decision of the Finance Director may appeal to the City Manager (or their designee) by filing a notice of appeal with the Finance Director within ten (10) days of the serving or mailing of the notice of the decision. The Finance Director shall transmit the notice, together with the file of the appealed matter, to the City Manager, who shall fix a time and place for hearing the appeal. The City Manager shall give the appellant not less than ten (10) days' written notice of the time and place for hearing the appeal. The City Manager may continue the hearing from time to time as necessary.

5.42.080 Penalties and Interest.

A. A penalty will be imposed on a marijuana retailer who mails or hand delivers the return and the Tax payment after the due date. The penalty is five percent (5%) of the unpaid tax. If the marijuana retailer files and/or pays more than thirty days after the due date, an additional twenty percent (20%) penalty will be added to the unpaid tax. Interest at the rate of one percent (1%) per month will be imposed on any unpaid tax from the due date until the date payment in full is received by the Finance Department.

B. If the Finance Director determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions of this Chapter, a penalty of twenty-five (25) percent of the amount of the Tax shall be added, in addition to the penalties above.

5.42.090 Expenditure of funds.

All money collected pursuant to this Chapter shall be general funds of the City and shall be used to support public safety operations.

5.42.100 Notice.

In case of service by mail of any notice required by this Chapter, the service is complete three days after deposit with the United States Post Office.

5.42.110 Violations.

A. No marijuana retailer or other person required to do so may fail or refuse to, in the time periods prescribed by this Chapter, furnish any return required to be made under this Chapter or furnish a supplemental return or other data required by the Finance Director, or make the remittance to the Finance Director of the amount of the Taxes, penalties, or interest due. No person may render a false or fraudulent return under this Chapter. No person required to make, render, sign, or verify any report regarding the Tax may make any false or fraudulent report.

B. At any time within three (3) years after any Tax required to be collected becomes due and payable, at any time within three years after any determination by the Finance Director or City Manager under this Chapter becomes final, or at any time within three (3) years after any person who is required to do so fails to furnish true and non-fraudulent information within the time periods prescribed by this Chapter, the City may bring an action in the McMinnville Municipal Court or in the courts of this state, any other state, or the United States, in the name of the City.

5.42.120 Penalty.

Any person violating any of the provisions of this Chapter shall, upon conviction, be punished by a fine of not more than \$500 for each violation. This fine shall be in addition to any and all administrative penalties and interest assessed pursuant to this Chapter.